

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

PENNSYLVANIA STATE
CONFERENCE OF THE NAACP, *et al.*,

Plaintiffs,

v.

AL SCHMIDT, in his official capacity as
Secretary of the Commonwealth, *et al.*,

Defendants

and

REPUBLICAN NATIONAL
COMMITTEE, *et al.*,

Intervenor-Defendants

Case No. 1:22-cv-00339-SPB

**SECOND SUPPLEMENTAL MEMORANDUM REGARDING THE STATUS
OF THE PENDING CROSS-MOTIONS FOR SUMMARY JUDGMENT**

On September 16, Plaintiffs submitted a supplemental response to the Court's September 3, 2024 Order (ECF No. 454) noting the vacatur of the Pennsylvania Commonwealth Court's decision in *Black Political Empowerment Project v. Schmidt*, 2024 WL 400321 (Pa. Commw. Ct. Aug. 30, 2024) ("B-PEP") on procedural grounds. Plaintiffs stated that, unless instructed otherwise, they would file a further supplemental memorandum if further state court litigation on this issue is initiated or renewed.

After that, a group of organizational plaintiffs including those here filed a King's Bench petition in the Supreme Court of Pennsylvania on the same issue as *B-PEP*—namely, whether the Pennsylvania Constitution prohibited enforcement of the

envelope-dating requirement to disenfranchise Pennsylvania voters. On October 5, the Pennsylvania Supreme Court denied review without reaching the merits. *See New PA Project Educ. Fund, et al. v. Schmidt, et al.*, No. 112 MM 2024 (Pa. Oct. 5, 2024).

Meanwhile, the same state constitutional argument is also raised in an election appeal pursuant to 25 P.S. § 3157 that is currently pending in Commonwealth Court, with expedited briefing concluded on October 14. *See Baxter v. Philadelphia County Board of Elections*, Nos. 1305 C.D. 2024, 1309 C.D. 2024 (Pa. Commw. Ct.). GOP Intervenors here are also intervenors in that case.

The status of the issue is thus unchanged. At present, there is no precedential ruling from any court of statewide jurisdiction that would protect voters from disenfranchisement due to the enforcement of the meaningless envelope-date rule. Plaintiffs accordingly maintain their request that this Court rule on the pending cross-motions in order to ensure the protection of their federal constitutional rights.

Unless instructed otherwise, Plaintiffs will file a further supplemental memorandum if any state court of statewide jurisdiction issues a ruling that would otherwise protect Pennsylvania voters from unlawful disenfranchisement .

CONCLUSION

Plaintiffs' motion for summary judgment should be granted.

Dated: October 15, 2024

Stephen Loney (PA 202535)
Marian K. Schneider (PA 50337)
AMERICAN CIVIL LIBERTIES UNION OF
PENNSYLVANIA
P.O. Box 60173
Philadelphia, PA 19102
sloney@aclupa.org
mschneider@aclupa.org

Witold J. Walczak (PA 62976)
AMERICAN CIVIL LIBERTIES UNION OF
PENNSYLVANIA
P.O. Box 23058
Pittsburgh, PA 15222
Tel: (412) 681-7736
vwalczak@aclupa.org
rtting@aclupa.org

David Newmann (PA 82401)
Brittany C. Armour (PA 324455)
HOGAN LOVELLS US LLP
1735 Market Street, 23rd Floor
Philadelphia, PA 19103
Tel: (267) 675-4610
david.newmann@hoganlovells.com
brittany.armour@hoganlovells.com

Respectfully submitted,

/s/ Ari J. Savitzky
Ari J. Savitzky
Megan C. Keenan
Sophia Lin Lakin
Adriel I. Cepeda Derieux
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
Tel.: (212) 549-2500
asavitzky@aclu.org
mkeenan@aclu.org
slakin@aclu.org
acepedaderieux@aclu.org

*Counsel for the Pennsylvania State
Conference of the NAACP, League of
Women Voters of Pennsylvania,
Philadelphians Organized to Witness,
Empower and Rebuild, Common Cause
Pennsylvania, Black Political
Empowerment Project, Make the Road
Pennsylvania, Barry M. Seastead,
Marlene G. Gutierrez, Aynne Margaret
Pleban Polinski, Joel Bencan, and
Laurence M. Smith*

CERTIFICATE OF SERVICE

I hereby certify that, on the date set forth below, I caused a true and correct copy of the foregoing Supplemental Memorandum to be served via the Court's electronic filing system upon all counsel of record.

Dated: October 15, 2024

Respectfully submitted,

/s/ Ari J. Savitzky
Ari J. Savitzky

Counsel for Plaintiffs